

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 23, 2008 Session

**EDITH L. STAGGS v. TRAVELERS INDEMNITY CO., a/k/a ST. PAUL
TRAVELERS**

**Direct Appeal from the Circuit Court for Overton County
No. 4124-M John Maddux, Judge**

**No. M2008-00016-WC-R3-WC - Mailed - October 1, 2008
Filed - November 4, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. The employee, Edith Staggs, brought this action, claiming that she fell, injuring her hip, as a result of a slippery floor while working at Hardee's. Her employer's insurance company, Travelers Indemnity Co., claims that she fell as a result of a seizure. The trial court awarded benefits to Ms. Staggs, and found her to be a credible witness. Travelers Indemnity Co. appeals, arguing that the trial court ruled incorrectly when it determined that Ms. Staggs was a credible witness and that she sustained a compensable injury. We affirm the trial court's judgment.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Circuit
Court Affirmed**

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., J., and WALTER C. KURTZ, SR. J., joined.

Vanessa Rae Comerford, Franklin, Tennessee, for the appellant, Travelers Indemnity Co., St. Paul Travelers

Anthony C. Maxwell, and John Milton Meadows, III, Livingston, Tennessee, for the appellee, Edith L. Staggs

MEMORANDUM OPINION

Factual and Procedural Background

The employee, Edith L. Staggs, was employed by Hardee's, which was insured by defendant Travelers Indemnity Company, aka St. Paul Travelers ("Travelers"). This action arises from an injury sustained by Ms. Staggs while working at Hardee's on March 18, 2005. Ms. Staggs had just washed her hands at a sink in the kitchen when she fell, resulting in injuries to her hip. Ms. Staggs testified at trial that she fell due to water, soap, and/or grease on the kitchen floor. While waiting

for the ambulance, Ms. Staggs experienced symptoms of a seizure.

Ms. Staggs has a medical history of panic and anxiety attacks, and from 1996 to 1998, she was diagnosed with bipolar disorder. Of the various medications prescribed to her, Xanax was found to be the most effective in treating her condition. Ms. Staggs's sister, Marti King, testified that she was aware of Ms. Staggs's panic and anxiety attacks, as well as her bipolar disorder, but she was unaware of any history of seizures. Ms. Staggs's prior medical records, however, indicate a history of seizures.

Employees at Hardee's are required to wear slip-resistant shoes and Ms. Staggs testified that she noticed that the kitchen floor was slippery the day of the incident. After using the restroom, Ms. Staggs returned to the kitchen area and washed her hands at the sink, as required. The sink had been used by Ms. Staggs and her co-workers several times that morning prior to the incident. The employee testified that she remembered losing her footing and thinking she was going to fall. Ms. Staggs did not recall if she fell immediately after washing her hands, but "guessed" that she must have taken a couple of steps away from the sink.

Dr. James McKinney, an orthopaedic surgeon, treated Ms. Staggs initially at the Cookeville Regional Hospital on the day of the event, and continued to provide treatment thereafter. His final diagnosis was left femoral neck fracture. Dr. McKinney performed a bipolar hemi-arthroplasty on Ms. Staggs instead of a total hip replacement. He did this because the latter is more prone to dislocation, which is a particular concern for an individual with a seizure disorder. After her hip repair surgery, her left leg is half an inch shorter than her right, and her mobility is severely limited. In Dr. McKinney's estimation, Ms. Staggs cannot walk more than four blocks. She cannot sit for more than an hour, and Dr. McKinney has advised against her driving. Because of this she was unable to return to work at Hardee's and her other prior places of employment. He testified that Ms. Staggs has a 20% impairment to the body as whole as a result of her injury.

Dr. McKinney stated in his operative report that Ms. Staggs had a seizure disorder. Ms. Staggs testified that she must have been repeating what she heard the hospital staff say when they asked her about her medical history the day of the accident, and that is the reason seizure disorders are indicated in her medical records. She testified she did not even remember visiting the Cookeville Regional Hospital, much less informing the staff there of her medical history. Dr. McKinney testified that Ms. Staggs could not recall to him the cause of or events surrounding her fall. When answering the question "Considering the nature of the claimant's occupation, medical history, along with your diagnosis and treatment, does this injury more probably than not arise out of the claimant's employment?" on a C-32 form, Dr. McKinney answered 'yes'. When Travelers took a cross-examination deposition, pursuant to Tennessee Code Annotated section 50-6-204(c), he clarified his response, stating that all he could say was that the injury occurred while she was working, but he could not testify to the cause of her fall.

Dr. McKinney testified that Xanax was used to treat seizure disorders, though it has other uses, such as treating anxiety attacks. He also testified that if a patient had been taking large amounts of Xanax and ceased suddenly, it would have adverse effects on his or her system. However, he acknowledged that neurology was not his area of expertise.

Dr. Oplless Walker, a pharmacologist who had no contact with Ms. Staggs prior to these proceedings, testified as an expert witness on the effects of her medications. He stated that if Xanax were suddenly stopped, it could produce seizure-like symptoms, such as those Ms. Staggs suffered. Dr. Walker and Dr. McKinney also testified that the symptoms of a seizure could be brought on by a blow to the head, such as the one Ms. Staggs suffered when she fell.

At trial, Ms. Staggs testified that she took Xanax the morning of the incident, despite medical records and statements she made to hospital staff later that day indicating that she was out of that medication. Ms. Staggs further testified that she had filled her prescription for Xanax eight days prior to the incident and had not yet used the entire supply. She testified that the hospital records indicating that she was out of Xanax were based upon the statements she made to medical personnel after the accident, and she only meant that she did not have any Xanax with her at the time.

The trial court ruled in favor of Ms. Staggs, finding that she "was confused on some of the issues that she testified to, but basically she was a very credible witness." The court ruled that Ms. Staggs's injuries resulted from a slippery floor and were, thus, compensable under the Workers Compensation Act. The court granted Ms. Staggs an award of 65% permanent partial disability to the body as a whole.

Standard of Review

Our standard of review of factual issues in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005); Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). When issues of credibility of witnesses and the weight to be given their in-court testimony are before the reviewing court, considerable deference must be accorded to the factual findings of the trial court. Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 733 (Tenn. 2002); see Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004). When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over another. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). Questions of law are reviewed de novo with no presumption of correctness afforded to the trial court's conclusions. Gray v. Cullom Machine, Tool & Die, 152 S.W.3d 439, 443 (Tenn. 2004).

Analysis

There are two issues raised by Travelers on this appeal: whether the trial court erred in determining that Ms. Staggs is a "very credible witness," and whether the court erred in its interpretation of Dr. McKinney's deposition regarding the cause of Ms. Staggs's fall. Because Dr. McKinney's testimony with regard to the cause of the incident was based largely, if not exclusively, on statements Ms. Staggs made to him, the outcome of this appeal thereby hinges on the resolution of the first issue.

I.

The trial court has made an apparently contradictory determination regarding the credibility of Ms. Staggs as a witness. The court found that she was very credible, but also stated that she was confused about the essential facts concerning her injury. Such a finding by a trial court is not without precedent. In Phipps v. Ins. Co. State of PA, 2002 WL 83602 (Tenn. Workers. Comp. Panel.2002), the plaintiff testified that she did not remember informing her doctor of back pain – the subject of that action – though she had previously testified in a deposition that she had so informed him. Id. at *3. The trial judge found her to be credible, though “confused” or “mixed-up,” and stated that, after reading the depositions, he was very troubled about her credibility, but once he observed her testify, he believed her to be credible, though confused. Id. The Special Workers’ Compensation Appeals Panel expressed concern regarding the credibility of the witness, but ultimately found that, “the trial court, who saw and heard her testimony, was in the best position to determine whether Mrs. Phipps was being evasive and misleading or was genuinely confused.” Id. at *6. See also, Clark v. Hardee’s, No. M2002-02942-WC-R3-CV, 2004 WL 77620 (Tenn. Workers’ Comp. Panel. Jan. 20, 2004) (Trial court described the employee as confused when filling out injury forms), Roberts v. Worth, No. 01S01-9412-CH-00157, 1995 WL 593079 (Tenn. Oct. 5, 1995) (The employee gave multiple reasons for fall that caused injury), and Hodge v. M.S. Carriers, Inc., No. 02S01-9611-CV-00098, 1997 WL 755123 (Tenn. Workers’ Comp. Panel. Dec. 9, 1997) (The court found a doctor be confused but credible).

In the present case, it is somewhat difficult to reconcile the trial court's finding that Ms. Staggs was "confused" about the essential elements of the case with its finding that she was "very credible." We are concerned that Ms. Staggs testified very clearly at trial that the floor was slippery, but could not tell Dr. McKinney how she fell on the day the event occurred. A trial court’s judgment of a witness’s credibility may be overturned if the preponderance of evidence or the “general nature of things,” (i.e., laws of physics) weighed against the witness’s testimony, shows the latter to be untrue. See Jamison v. Metropolitan Life Ins. Co., 145 S.W.2d 553 (Tenn.App.1940) and Mays v. State, 238 S.W. 1096 (Tenn.1921). Neither has been shown in the present case. Viewing the evidence as a whole we conclude that the trial court’s determination that Ms. Staggs was “very credible” should not be overturned because of its simultaneous determination that she was “confused.”

Travelers contends that Ms. Staggs may have fallen, not because of a slippery floor, but because she suffered a seizure. Travelers points out that she had been taking medication sometimes prescribed to treat seizure disorders and evidence in her medical files of a history of seizures, despite her testimony to the contrary. Even when most favorably construed toward Travelers, the evidence in the record shows she has had seizures in the past, that she might have stopped taking medication, an act which could have resulted in a seizure, and that a seizure is a possible explanation for her fall. The evidence is equally consistent with the theory that Ms. Staggs fell on a slippery floor and then suffered a seizure as a result of striking her head. We find that the evidence in the record does not preponderate against the decision of the trial court.

II.

Travelers also contends that the trial court misinterpreted Dr. McKinney's testimony. On his C-32 form, Dr. McKinney was indicated that Ms. Staggs's injury more likely than not arose from her employment. In his deposition, Dr. McKinney could give no more definitive a statement than that Ms. Staggs was injured while she was at work and that she had a seizure, though he could not say whether the seizure caused the fall or vice versa. The fact that Ms. Staggs injuries resulted from her fall are not in dispute. Absolute certainty with respect to causation is not required in workers' compensation cases, and the courts have recognized that, in many cases, expert opinions in this area contain an element of uncertainty and speculation. Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005). Viewing the evidence in that light, we conclude that Ms. Staggs met her burden of proof for expert medical testimony.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Travelers Indemnity Company and its surety, for which execution may issue if necessary.

JON KERRY BLACKWOOD, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
JUNE 23, 2008 SESSION

**EDITH L. STAGGS v. TRAVELERS INDEMNITY CO., a/k/a ST. PAUL
TRAVELERS**

**Circuit Court for Overton County
No. 4124-M**

No. M2008-00016-WC-R3-WC - Filed - November 4, 2008

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Travelers Indemnity Company and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM